



California Fair Political Practices Commission

April 30, 1986

Jack L. White
City Attorney
City of Anaheim
200 South Anaheim Blvd., Suite 356
Anaheim, CA 92805

Attention Max Slaughter

Re: Your Request for an Opinion
Our No. O-86-001/A-86-143

Dear Mr. White:

The Commission received your request for an Opinion yesterday, April 29, 1986. The Executive Director has directed me to deny your request for an Opinion and to render Formal Written Advice to you instead. See Regulations 2 Cal. Adm. Code Sections 18320, 18321, 18322, 18324, 18326, 18327 and 18329, copies enclosed. The Opinion Request is denied on the basis of 2 Cal. Adm. Code Section 18320(f)(2) and may be appealed by you pursuant to 2 Cal. Adm. Code Section 18321.

The Formal Written advice is based upon the facts provided in your letter and our telephone conversation of this date.

Your letter has presented the following facts and questions.

FACTS

1. The City of Anaheim is a municipal corporation formed and acting pursuant to its city charter.
2. The City Charter of the City of Anaheim provides that the governing board of the City shall be a City Council consisting of five elected members (a Mayor, Mayor Pro Tempore, and three council members).
3. The City Council is vested with final authority to approve, conditionally approve, or disapprove petitions for zoning actions filed with the City.

4. A planning commission consisting of seven lay members exists to consider zoning petitions. The actions of the planning commission on zoning petitions is final unless: (a) appealed to the City Council by an aggrieved person or (b) a member of the City Council requests a City Council hearing of the petition.

5. After a public hearing on a zoning petition, the City Council may approve, conditionally approve, or disapprove a zoning petition by resolution of the City Council.

6. A resolution of the City Council may only be enacted by the affirmative vote of at least three of the members of the City Council.

7. No body other than the Planning Commission or City Council is authorized by law to decide zoning petitions.

8. A developer has filed a zoning petition (an application for a conditional use permit) which, if approved, would permit construction of a 91 foot high, 470 room hotel (HOTEL) on property located on the east side of Harbor Boulevard.

9. The site of the proposed hotel (HOTEL SITE) is directly across the street (Harbor Boulevard) from and east of the Disneyland Amusement Park (Disneyland).

10. The HOTEL SITE is presently zoned C-R (Commercial Recreation) which zone permits hotels as a matter of right provided such hotels do not exceed 75 feet in height.

11. Structures in excess of 75 feet high may be permitted by a conditional use permit if the height does not exceed the allowable height shown on Map 1124 entitled "Anaheim Commercial Recreation Area Height Standard Guideline," which map has been adopted by ordinance of the City.

12. Map 1124 establishes a cone-shaped height limitation for structures to be built in the area surrounding Disneyland. Disneyland is located at the center of the cone. The height limits of Map 1124 are most restrictive when applied to structures nearest

the center of the cone. The farther from the center of the cone, the higher the structure permitted.

13. In no event is a structure limited (by Map 1124) to less than 75 feet high regardless of its proximity to the center of the cone.

14. The height limits imposed by Map 1124 are intended to limit and prevent visual intrusions by structures, buildings, signs, etc. into Disneyland in order that the unique atmosphere of Disneyland might be maintained.

15. Disneyland has, in response to the notice of public hearing on this HOTEL application submitted written opposition to the structure if it exceeds 75 feet in height. Disneyland has historically opposed attempts to build structures which would intrude into the Disneyland Park.

16. Each member of the Planning Commission has received, within the past twelve months, gifts from Disneyland exceeding \$250.00 (but less than \$450.00) in value.

17. The Planning Commission, due to a possible conflict of interest due to such gifts from Disneyland, has declared a conflict and referred the zoning petition for the HOTEL to the City Council without recommendation.

18. A public hearing to consider the zoning petition for the HOTEL is to be conducted by the City Council in early May, 1986.

19. Three members of the City Council have received gifts from Disneyland exceeding \$250.00 in value within the 12 month period preceding the hearing date. The maximum value of such gifts does not exceed \$450.00 for any member of the City Council.

20. The decision to approve, conditionally approve, or deny the zoning application for the 91 foot high HOTEL may have a material financial effect upon Disneyland, the donor of the gifts to the three Council members.

21. Pursuant to Government Code Section 65956(b), the HOTEL PROJECT may be deemed to be

approved if the City Council fails to act upon the application on or about September 18, 1986 (Six months after filing of the application by the developer of the HOTEL, which application was filed March 19, 1986).

QUESTIONS

1. Does the "rule of necessity" permit the City Council to consider and act upon the hotel application?

2. In the event the answer to question No. 1 is in the affirmative, may all members of the City Council who have received gifts exceeding \$250.00 from Disneyland declare the existence of a conflict of interest and vote on the issue?

3. If the answer to question No. 2 is in the negative, how is a vote of the City Council to be conducted in view of the need for three affirmative votes to enact a resolution to approve or deny the application?

ANALYSIS

You advised me over the telephone that the gifts in question here do not consist of the "silver passes" discussed in the first portion of the Hopkins Opinion, 3 FPPC Opinions 107, No. 77-022, December 8, 1977. Rather, they involve a series of gifts made at various times over the last 12 months and consist of such things as one-day passes used at Disneyland and fishing trips, etc. With the exception of one pass received by one councilmember in early 1986, all the gifts were received in 1985 and have been disclosed on the councilmembers' respective Statements of Economic Interests (SEIs).

Because some of these gifts were received a number of months ago, they will cease to be relevant when 12 months has passed; consequently, councilmembers desiring to participate can simply not accept any further gifts and they will no longer be disqualified once the aggregate value of gifts received within the preceding 12 month period has dropped below \$250. For instance, a review of the SEIs on file with our office indicates that the great bulk of the value of gifts received from Disneyland by three of the councilmembers involved a "San Diego Fishing Trip" on July 25-26, 1985. Consequently, on July 27, 1986 and thereafter, this trip would no longer count toward the aggregate total of gifts received from Disneyland during the preceding 12-month period and disqualification would not be required.

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As to the portion of the Hopkins Opinion which addresses the provisions of Government Code Section 87101, which you have asked to have the Commission review, it is not applicable to these facts. That portion specifically states as follows:

Therefore, we conclude that Section 87101 does not apply to a conflict that arises because of gifts an official has accepted if it was reasonably foreseeable at the time the gift was received that the official would be asked to make or participate in the making of a governmental decision affecting the donor. The requirement of disqualification in such situations should be assessed under the standards set forth in Sections 87100 and 87103, without regard to the provisions of Section 87101.^{6/}

^{6/} In order to prevent a situation from arising in the future where all or nearly all of the members of the Anaheim City Council are disqualified from acting on a particular matter, the members of the city council may wish to refrain from accepting gifts worth \$250 or more from any donor which may foreseeably be affected by future city council votes.

In the instant case, the gifts given by Disneyland all occurred prior to the filing of the subject application by a third party. The bulk of the gifts giving rise to disqualification were received last July, long before any knowledge of this request existed. Consequently, the quoted provisions set forth in the Hopkins Opinion are not satisfied. Hence, the answer to your first question is that Government Code Section 87101 would apply to these circumstances.

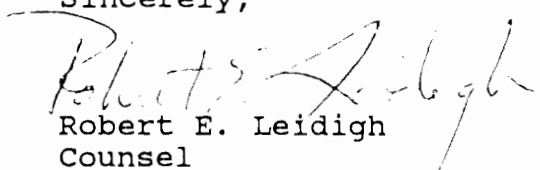
In response to your second and third questions, those have been answered in the Commission's Hudson Opinion, 4 FPPC Opinions 13, No. 77-007, Feb. 7, 1978. A copy is enclosed for your reference.

In addition, I enclose for your reference copies of the Commission's recently adopted regulations on the subject of

Jack L. White
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gifts and invite your agency's participation in the adoption of further regulations in that area.

Sincerely,



Robert E. Leidigh
Counsel
Legal Division

REL:plh

cc: City of Anaheim
City Attorney's Office
1275 North Berkeley Avenue, Suite 400
Fullerton, CA 92632



Office of
CITY ATTORNEY
Prosecution Section

April 17, 1986

State of California
Fair Political Practices Commission
1100 K Street Building
Sacramento, California 95814

Attention: John Keplinger, Executive Director

Dear Mr. Keplinger:

Enclosed please find my Request for Opinion concerning an unusual set of facts which has arisen in the City of Anaheim.

I am requesting that you grant this request for an opinion in order that the Commission may have an opportunity to reconsider and reverse that portion of its Opinion No. 77-022 which holds that the "rule of necessity" has no application where a conflict of interest arises due to gifts received by public officials.

As you may discern from a review of the Statement of Facts, the elected City Council of the City of Anaheim may be unable to vote (for or against) upon a hotel project due to a possible conflict of interest arising from gifts received from a neighboring opponent of the project. Furthermore, it appears that, if the City Council does not act on the application before September 18, 1986, the project may be deemed approved by operation of law. This is true despite the possibility that the project could be potentially harmful to the public generally.

While this letter is not intended to be a lengthy brief, I am unable to find any support for the Commission's decision to refuse to apply the "rule of necessity" to conflicts of interest arising from gifts (as opposed to conflicts arising from investments, etc.)

The Commission's interpretation permits the "rule of necessity" in cases where public officials have conflicts of interest arising from income or investments which income or investments may be directly affected by the decision. On the other hand, the Commission's interpretation precludes the application of the "rule of necessity" where the public official has received a gift or gifts exceeding \$250.00 within a twelve-month period even if the decision will have absolutely no effect upon the value of gift(s) previously received by the public official.

F P P C
APR 20 2 21 PM '86
CITY OF ANAHEIM, CALIFORNIA

1275 North Berkeley Avenue, Suite 400
Fullerton, California 92632

Telephone:
714/870-8200

Fair Political Practice Commission
April 17, 1986

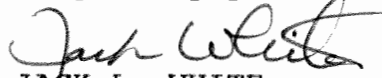
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In my review of the statutes, I am unable to discern any language in Government Code Section 87101 which permits the Commission to promulgate a rule which purports to abrogate the "rule of necessity" in some instances and not others.

Hopefully, the Commission will revise its opinion to hold that, consistent with the statute, the "rule of necessity" operates in all cases.

In view of the pending hearing of this matter, your earliest response would be greatly appreciated.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jack White", written in dark ink.

JACK L. WHITE,
City Attorney

MES:fm
5057M



Office of
CITY ATTORNEY
Prosecution Section

CITY OF ANAHEIM, CALIFORNIA

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April 17, 1986

State of California
Fair Political Practices Commission
1100 K Street Building
Sacramento, California 95814

Attention: John Keplinger, Executive Director

Re: Request for Opinion re: Rule of Necessity

Please consider this letter a request for opinion concerning the facts outlined in the Statement of Facts included herein.

This request for an opinion of the Fair Political Practices Commission is submitted pursuant to 2 Cal. Adm. Code Section 18320.

I am the City Attorney for the City of Anaheim and, as such, I represent the City of Anaheim and its officials in legal proceedings arising from their official duties.

The identities of the persons whose duties are in question in this matter are:

Donald R. Roth, Mayor
Irv Pickler, Mayor Pro Tempore
E. Llewellyn Overholt, Jr.
Ben Bay, Council Member
Miriam Kaywood, Council Member

STATEMENT OF FACTS

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*Rec'd 4/29/86
JER*

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Respectfully submitted,


JACK L. WHITE
City Attorney